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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,104	06/11/2002	Trese J. Vacker	TVAC.01P	9166

23732 7590 11/17/2004

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EXAMINER

WILLATT, STEPHANIE L

ART UNIT PAPER NUMBER

3732

DATE MAILED: 11/17/2004

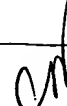
Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/064,104

Applicant(s)

VACKER, TRESE J. 

Examiner

Stephanie L. Willatt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-17 is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: In the first line of paragraph [0015], "TVAC.01P Patent3" does not make sense.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin in view of Miller.

Benjamin discloses a hair trim guide comprising an eyeglass frame having a front face frame (F) and a pair of temple pieces (T) attached to and extending rearwardly from the front face frame (F), shown in Figure 1. Each of the pair of temple pieces (T) is biased inwardly and has a portion thereof resting upon an ear of a user when the eyeglass frame is positioned for use, as shown in Figure 1. A trim guide (template 16) is selectively attached to the eyeglass frame, as shown in Figure 1. The trim guide (template 16) is frangible at its cut lines (32, 34, 36) inscribed on the trim guide, as

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discussed in column 2, lines 31-46. The cut lines (32, 34, 36) are horizontal. Benjamin also teaches bias cut lines (70, 72, 74, 76) in column 3, lines 16-25. Benjamin does not disclose vertical cut lines. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the same principal of adjustability shown by the horizontal and bias cut lines to the width of the trim guide by including vertical cut lines, in order to provide adjustability of the width of the trim guide, and in effect, the width of the sideburns. It is well known that men vary the width of their sideburns when trimming.

Benjamin does not disclose a peg attached to the eyeglass frame and projecting therefrom. Miller discloses a peg (shaft 24) attached to a frame and projecting therefrom so that it can fit through an aperture (slit 32) of a trim guide (template 28), as discussed in column 2, lines 7-23. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a peg attached to the temple of the frame of Benjamin, as taught by Miller, and an aperture on the trim guide of Benjamin, as taught by Miller, in order to provide a means for attaching the trim guide to the temple in such a way that the trim guide does not slide laterally out of position.

4. Claims 3-7 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin in view of Miller as applied to claims 1-2 and 8-10 above, and in further view of Sessoms.

Benjamin and Miller disclose the features discussed above, but not disclose multiple pegs or multiple apertures. Sessoms discloses an adjustable neck shaving guide strip (1) including multiple holes (openings 2) and multiple pegs (buttons 4). The

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purpose of the multiple holes (openings 2) and multiple pegs (buttons 4) is to adjustably attach the two components, which is the same function as that of the peg (shaft 24) and aperture (slit 32) of Miller. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the combination of Benjamin and Miller with multiple pegs and multiple apertures, as taught by Sessoms, since multiple pegs and multiple apertures are art recognized functional equivalents of the shaft and slot of Miller. When the multiple holes replace the vertical slit taught by Miller, the multiple holes would form a vertical array, since the adjustability is in the vertical direction.

Claims 11-13 recites the reverse structure of claims 3-7 in the sense that the pegs are located on the trim guide instead of the frame and the holes are located on the frame instead of the trim guide. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the combination of Benjamin, Miller, and Sessoms with the pegs located on the trim guide instead of the frame and the holes located on the frame instead of the trim guide, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Gazda*, 104 USPQ 400 (CCPA 1955).

#### ***Allowable Subject Matter***

5. Claims 14-17 are allowed.

#### ***Response to Arguments***

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6. Applicant's arguments filed 12 August 2004 have been fully considered but they are not persuasive. Applicant essentially argues that Miller discloses a threaded shaft rather than a plain peg. However, the claims do not specify whether or not the peg is threaded. Further, the dictionary definition of "pegged" is "to fasten with a peg". The peg (24) in Miller, although threaded and in combination with nut (38) meets the broad definition of "pegged" as well as the broad claim language of the present application. Therefore, the claims are still unpatentable over Benjamin in view of Miller.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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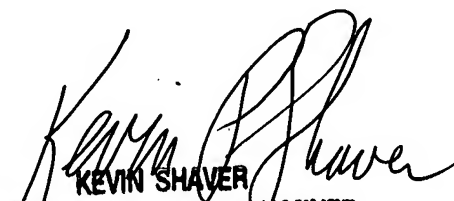
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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